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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of CHRISTINE and
LARRY D. JENT.

2d Civil No. B205193
(Super. Ct. No. 1165872)
(Santa Barbara County)

CHRISTINE R. JENT,

Respondent,

v.

LARRY D. JENT,

Appellant.

In this dissolution of marriage action the trial court determined that the parties' date of separation was in February 2005, when Wife filed this action, and not in February 1990, when Husband moved to Florida. Husband contends this finding is not supported by substantial evidence. Husband also contends the trial court erred in not awarding part of his pension to a third party as his putative spouse. We affirm.

FACTS

The parties were married in September 1970. There are no children of the marriage. Husband was a pilot for American Airlines (American) for 34 years. In 2003, Husband was diagnosed with coronary artery disease, and could no longer fly as a

commercial pilot. He began receiving long term disability. He retired from American in June 2007. Wife owns an interior design business in Santa Barbara, which she formed in 1992.

In 1983, Husband was in an automobile accident in Santa Barbara. He received a gross award of \$1.5 million. He invested the proceeds in a custom home in Lake Tahoe. The parties suffered a financial reverse in 1988. The home went into foreclosure, and the parties filed for bankruptcy.

The parties returned to Santa Barbara in 1989. In early 1990, Husband decided to move to Miami, Florida, so that he could fly international routes for American. Wife was sympathetic with Husband's decision to fly out of Florida. They had no discussion about dissolving their marriage, and she had no idea he intended to stay there.

After Husband moved to Florida, he began sending Wife \$4,000 per month living expenses. He usually wired the funds to their joint bank account in Santa Barbara. He continued sending funds until shortly after Wife filed this dissolution action.

In early 1990, Husband filed for divorce in the Dominican Republic through an agent in Palm Springs. Neither party had ever resided in the Dominican Republic. Wife knew nothing about the proceedings. She was never served and Husband never told her about it. Wife did not learn about the Dominican Republic proceedings until after she filed this proceeding.

In April 1990, Husband married Mary S. (Mary). Husband never told Wife about the marriage, and she did not know about it until after she filed this proceeding. Husband did not receive a final divorce decree from the Dominican Republic until 1991, after he married Mary. Husband did not remarry Mary after he got the decree.

Husband continued to visit Santa Barbara about four times a year. Sometimes he would stay with Wife, and sometimes with his mother, who lived in Santa Barbara. When Husband was in Santa Barbara, he frequently dined with Wife. They went together to other social events. He hosted a birthday party for Wife's 50th birthday. In 1994, Wife's mother died. Husband helped with a memorial for her.

In 1994, Wife decided to purchase a home in Santa Barbara. She used money she inherited from her mother for the down payment. The parties took title to the property as "husband [and] wife as joint tenants." Loan documents executed by both parties for the balance of the purchase price also list the borrowers as "husband [and] wife as joints tenants." When the parties refinanced the home in 1998, the loan documents Husband signed reflected that the parties were husband and wife.

Each year from 1990 to 2005, Husband filled out income tax returns showing himself and Wife as married filing jointly. After he prepared the returns, he gave Wife what purported to be copies of the completed returns. In fact, Husband did not file the joint returns. Instead, he prepared a separate return for Wife, signing her name.

DISCUSSION

I

Husband contends the trial court erred in refusing to recognize February 1990 as the date of separation.

Although the date of separation may be a critical fact in determining the parties' rights to property and income, the Legislature has never defined the term nor specified a standard for determining it. (See Fam. Code, § 771; *In re Marriage of Hardin* (1995) 38 Cal.App.4th 448, 450-451.) In the absence of guidance from our Legislature, the courts look to case law. (*Hardin, supra*, at p. 451.)

Here both parties cite the definition provided in *In re Marriage of Hardin, supra*, 38 Cal.App.4th at page 451 [quoted with approval in *In re Marriage of Manfur* (2006) 144 Cal.App.4th 925, 930], which states: "[T]he date of separation occurs when either of the parties *does not* intend to resume the marriage *and* his or her actions bespeak the finality of the marital relationship."

The date of separation is a question of fact. (*In re Marriage of Manfur, supra*, 144 Cal.App.4th at p. 930.) Our review is limited to determining whether the trial court's finding is supported by substantial evidence. (*Ibid.*)

"In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence unfavorable to the prevailing party as

not having sufficient verity to be accepted by the trier of fact. [Citation.] Where the trial court or jury has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though different inferences may also be reasonable. [Citation.] The trier of fact is not required to believe even uncontradicted testimony. [Citation.]" (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.)

That Husband left Santa Barbara and began a relationship with another woman is not determinative. (See *In re Marriage of Baragry* (1977) 73 Cal.App.3d 444, 448 [that Husband moved out of family home and moved into an apartment with girlfriend does not show a complete and final break in the marital relationship].) Here Husband obtained a Dominican Republic divorce decree, but did not serve Wife or otherwise inform her. Husband married another woman but the ceremony took place prior to the Dominican Republic divorce decree. After the decree, Husband did not remarry her. Again, Husband did not inform Wife.

Even after the marriage ceremony and Dominican Republic decree, Husband continued to send Wife money on a regular basis; visited Santa Barbara four times a year; sometimes stayed with Wife when he visited; ate meals with Wife; attended social functions with her, including hosting her birthday party; purchased a home with her as husband and wife; refinanced the home as husband and wife; and filled out tax returns purporting to show a joint filing. There is more than ample evidence to support the trial court's conclusion that until the dissolution action was filed neither Husband nor Wife intended a complete and final break of the marital relationship.

Husband places great weight on Wife's admission that he left home permanently. On cross-examination of Wife, the following colloquy took place:
"Q Your testimony was he just stayed away, he stopped coming home, he did not discuss it. Do you recall that? [¶] A That sounds correct."

Husband points to no such testimony on direct examination of Wife. Husband's attorney simply got Wife to admit to a characterization of her testimony. The trial court was not bound by that characterization.

In fact, Husband did not just stay away and stop coming home. By his own admission, Husband returned to Santa Barbara four times a year. The evidence shows Husband continued to maintain regular contact with Wife even after he moved to Florida.

Husband argues evidence that he filled out and presented to Wife false joint tax returns does not support the trial court's findings. Husband points to Wife's testimony that when Husband returned her tax information to her, "I would say thank you, and file it away." Wife also testified, "I probably looked inside to see that everything was there, but I didn't review - - if you're asking if I reviewed the taxes, the answer was no."

Husband claims that if Wife never reviewed the tax returns she could not have relied on them to conclude she was still married. But simply because Wife did not "review[] the taxes" does not mean she was unaware Husband prepared joint returns. Filing status can be determined simply by glancing at the upper part of the return's front page. There is no need to review the taxes to notice the filing status.

Moreover, Husband's argument misses the point. Even assuming the joint returns say nothing about Wife's state of mind, they speak volumes about Husband's state of mind. That Husband went through all the trouble of preparing false joint returns, shows Husband did not view the marital relationship as ended.

In the end, Husband's argument on appeal is based entirely on a view of the evidence most favorable to himself. That view of the evidence is contrary to the rules of reviewing the evidence on appeal. (See *Rodney F. v. Karen M.*, *supra*, 61 Cal.App.4th at p. 241.). It avails Husband nothing.

II

Husband contends the court erred in ruling that Mary is not entitled to a portion of his pension. Husband claims that Mary is entitled to a portion of his pension as a putative spouse.

The trial court's statement of decision states that Mary had been joined as a party in the litigation, did not appear, and has been defaulted; that Husband has no standing to raise Mary's interest; and that there is insufficient evidence that Mary had a

good faith belief in the validity of her marriage as required for a putative spouse. (Fam. Code, § 2251, subd. (a).)

Husband cites no authority that he has standing to assert Mary's interest. (See *Sherwyn v. Dept. of Social Services* (1985) 173 Cal.App.3d 52, 58 [plaintiffs have no standing to bring cause of action on behalf of others].)

Moreover, Husband points to no evidence of good faith that the trial court was compelled to accept. Husband claims that he entered into the marriage with Mary in good faith. But Husband obtained a Dominican Republic divorce decree without ever having served or even notified Wife. He married Mary prior to the Dominican Republic divorce decree and did not bother to remarry her after the decree. Even assuming Husband can rely on his own good faith to make Mary a putative spouse, the evidence does not make a compelling case for Husband.

The judgment is affirmed. Costs are awarded to Wife.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Thomas P. Anderle, Judge

Superior Court County of Santa Barbara

Drury Pullen, Susanna V. Pullen and Jennifer E. Drury for Appellant.

Miles T. Goldrick for Respondent.